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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS SITUATIONS AND REPORTS OF SPECIAL RAPPORTEURS AND REPRESENTATIVES

Situation of human rights in Burundi

Note by the Secretary-General

The Secretary-General has the honour to transmit to members of the General Assembly a brief interim report on the human rights situation in Burundi prepared by Mr. Paulo Sérgio Pinheiro, Special Rapporteur of the Commission on Human Rights, pursuant to Commission on Human Rights resolution 1996/1 of 27 March 1996 and Economic and Social Council decision 1996/254 of 23 July 1996.

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ANNEX

Interim report on the human rights situation in Burundi submitted by the Special Rapporteur of the Commission on Human Rights, pursuant to Commission on Human Rights resolution 1996/1 and Economic and Social Council decision 1996/254

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I. INTRODUCTION

1. The Special Rapporteur on the human rights situation in Burundi is submitting this report to the General Assembly in accordance with Commission on Human Rights resolution 1996/1. The report covers the period from 16 February to 30 September 1996 and reflects the Special Rapporteur's findings with regard to the Burundi crisis during his third mission to that country from 1 to 17 July 1996, after the Burundi authorities had agreed to his request of 14 June 1996 for a visit. The mission was undertaken a week before the coup d'état which brought Major Pierre Buyoya to power on 25 July 1996 and led to the suspension of the National Assembly and political parties.

2. In the light of the recent coup d'état, the Special Rapporteur has decided to stress in the present report those facts which he deems particularly relevant to an understanding of the current situation in Burundi and to an in-depth analysis of the increase in the number of human rights violations in Burundi. Chapter II of the report deals with recent developments in the Burundi crisis; chapter III sets forth the Special Rapporteur's observations, while the last chapter, chapter IV, contains his recommendations. Some of the issues addressed in this document, including those relating to specific violations of human rights, will be considered in greater detail in the report to be submitted to the Commission on Human Rights at its fifty-third session.

3. During his most recent stay in Burundi, the Special Rapporteur had talks with the country's highest political, administrative, judicial, military and religious authorities. He would like to thank the former Minister responsible for human rights, social welfare and the advancement of women for the very fruitful exchange of views that he had with him. He, however, deplores the fact that despite renewed requests, he was not able to meet the then Prime Minister, who was said to be ill, or the Minister responsible for the resettlement and reinsertion of displaced, dispersed and repatriated persons. The Special Rapporteur had hoped to take up with the Prime Minister the contents of a letter dated 9 May 1996 concerning the Mutoyi and Kivyuka incidents of 26 April and 3 May 1996 respectively, which he had sent to the Prime Minister and also to the President of Burundi, and to which he had received no reply. He had also wanted to bring up during those talks another communication dated 7 June 1996, which he had written together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, addressed jointly to the Prime Minister and the President, with respect to the savage murder of three delegates of the International Committee of the Red Cross (ICRC) on 4 June 1996, near Mugina, in Cibitoke province, and the Prime Minister's reply dated 24 June 1996.

4. The Special Rapporteur warmly thanks the heads of diplomatic missions accredited to Burundi with whom he held a fruitful exchange of views, as well as the Secretary-General's Special Representative for Burundi, the delegate of the United Nations High Commissioner for Refugees, the political adviser of the Special Representative of the Secretary General of the Organization of African Unity (OAU) and the commander of the OAU Observer Mission in Burundi (OMIB) for their insightful comments on the turn of events in Burundi. He also appreciated the opportunity he afforded to meet briefly at the airport the Special Envoy of the United States of America for Rwanda and Burundi and to hold talks with the

Belgian Ambassador to the Great Lakes region. He was pleased to have been able to meet many representatives of international non-governmental organizations and various associations of Burundi's civil society.

5. Lastly, the Special Rapporteur would like to pay tribute to the head of the operational office of the United Nations Centre for Human Rights in Bujumbura and his entire staff for the meticulous arrangements made for his mission, the cordial welcome extended to him, the logistical support provided to him and the smooth operation of his mission, often under very unpredictable circumstances. Worthy of note is the excellent collaboration between the Centre's operational office, the Special Representative of the Secretary-General and the coordinator of the United Nations security unit in Bujumbura, who greatly facilitated his mission, especially his travel in the provinces, in conditions of maximum security. The Special Rapporteur would like to commend the first batch of human rights observers deployed in Bujumbura for the tremendous courage and dynamism they showed in conducting often sensitive investigations into serious violations of human rights.

6. The Special Rapporteur visited the provinces twice; he went first to Gitega on 11 July and then on 12 July proceeded to Ngozi, where he held discussions with the prosecutors and the presidents of the courts of appeal of the two towns and with representatives of OMIB. He also visited the women's prison at Ngozi, which suffered from a lack of water and adequate health care. Next, he had talks with the head of the delegation of the United Nations High Commissioner for Refugees about the tension prevailing in several camps in the region at the time of his visit. He would like to warmly thank the World Food Programme for its valuable assistance in organizing his air travel to the two above-mentioned towns.

7. On 13 July 1996,the Special Rapporteur, accompanied by the director of King Khaled hospital in Bujumbura, toured the hospital, where several adults and children suffering from gunshot wounds were being cared for, having been there in some cases for many months. He then proceeded to the Kamenge neuro-psychiatric centre, which had been converted about 18 months previously into a shelter for 3,500 displaced Hutus from that neighbourhood. He toured the camp with the director of the centre and his staff, who extended a warm welcome to him. However, the Special Rapporteur was unpleasantly surprised to learn, a few days later, that Mr. Déo Baribwegure, the administrator of the centre, with whom he had talked, had been arrested the day after his visit for complicity with "assailants". The Special Rapporteur immediately took up the case with the then chief of staff of the gendarmerie, who confirmed the arrest. According to the latest news, the administrator is still being detained at Mpimba central prison. The Special Rapporteur then visited a nearby centre for 4,500 displaced Hutus, situated not far from the dispensary of pastor Johnson, to whom he paid a second visit. The camp had received a fresh influx of about 100 persons, mainly women and children, who had scrambled down the slopes of the surrounding hills in order to escape from the pursuing soldiers. The Special Rapporteur also saw a man with serious gunshot wounds, wrapped in a blanket, who had been brought to the camp the day before his visit.

8. That same day, the Special Rapporteur met the area head of Kinama district in Bujumbura, who told him about the ongoing experiment to bring back the Hutus

and Tutsis who had fled from their homes and to help them to coexist peacefully. Some 55,000 persons had already returned to the district. He was able to travel widely throughout Kinama and to observe how young people from the two communities were committed to monitoring the arrivals and departures of people living in and visiting their neighbourhood.

9. Shortly before embarking on his mission on 1 July, the Special Rapporteur met with the United Nations High Commissioner for Human Rights to convey to him his serious concerns about the latest developments in Burundi. On the same day in Brussels, before flying to Bujumbura, the Special Rapporteur held talks with the Chef de Cabinet for the Member of the Commission in charge of External Relations with African, Caribbean and Pacific (ACP) Countries and South Africa and the Chef de Cabinet of the Minister for Foreign Affairs of Belgium. On 18 July 1996, the day after returning from his mission, the Special Rapporteur had a fruitful exchange of views with the representatives of Western European diplomatic missions in Geneva and held a press conference for journalists accredited to the United Nations Office at Geneva, which was widely reported in the international news media in the following days. In the course of his stay in Europe, the Special Rapporteur granted several interviews to major international news agencies, such as the British Broadcasting Corporation (BBC) and Radio France International. He also participated in several radio programmes following his return to Brazil.

10. At the third meeting, held in late May 1996 in Geneva and attended by special rapporteurs/representatives and chairmen of working groups, the Special Rapporteur held talks with the other two Special Rapporteurs for Rwanda and Zaire on issues common to the countries of the Great Lakes region. All three expressed the desire to undertake a joint mission in the course of which they would visit the three countries covered by their respective mandates. That mission, which was initially planned for the second half of October and was authorized and encouraged by the United Nations High Commissioner for Human Rights, had finally to be postponed until a later date because of the difficult situation in the Great Lakes region.

II. RECENT DEVELOPMENTS IN THE BURUNDI CRISIS

A. Evolution of the Burundi crisis following the second mission of the Special Rapporteur to Burundi

11. During the second half of 1996, the trends which the Special Rapporteur has already described in the addendum (E/CN.4/1996/16/Add.1) to his initial report to the Commission on Human Rights following his second mission to Burundi from 9 to 16 January 1996 have been deteriorating markedly. The human rights situation in Burundi has assumed catastrophic proportions, with its endless stream of targeted assassinations, arbitrary arrests, forced disappearances, looting, crime and the destruction of private property.

12. Although the responsibility for the "interlocking of reciprocal acts of violence" 1/ must be shared equally by the Tutsi and Hutu communities, the Special Rapporteur notes that the Government of Burundi and its armed forces have played a major role in the perpetration of these acts, in particular, the

massacres of civilians, of which there were many during the period under review. Women, children and elderly persons accounted for the majority of the victims of this indiscriminate violence. There reportedly were usually no witnesses to the carnage and massacres. Armed Hutu gangs and Tutsi militia, for their part, often were implicated in deadly encounters that resulted in grave violations of international humanitarian law and human rights, which the Special Rapporteur very forcefully condemns. Indeed, even though the large number of clashes between the army and the rebels, often attributable to the latter, which was typical of the first half of 1996, suggest that a smouldering civil war is under way (see E/CN.4/1996/16, para. 10), the Special Rapporteur wishes to point out that the Burundi army has what amounts to a monopoly on the heavy weapons which it uses in its confrontations with the rebels. 2/ Reports by numerous witnesses indicate that at times the rebels seem to use fairly sophisticated equipment and that their combat logistics have improved, although they are not yet powerful enough to deal a decisive blow to the Burundi army in conventional combat. The weapons commonly used by the rebels are largely hand-crafted and makeshift, and the injuries they inflict are sometimes very difficult to treat, given the wide variety of projectiles and materials used.

13. While it is true that Burundi currently is being torn apart by civil war, it should be noted at the outset that the resulting violence and unrest can be attributed to certain actors or parties: first and foremost to the armed forces and the security forces, next, to the militias, which are related to them, and, lastly, to an armed opposition that itself comprises various groups. All these actors are responsible, although to varying degrees, for the grave violations of human rights and international humanitarian law which are being perpetrated.

14. However, it would be unfair to put the rebel groups, no matter what their role in the violence has been, on the same footing as a State which has ratified the major international instruments on human rights and international humanitarian law and is therefore bound by strict obligations. Such groups do, nevertheless, have an obligation to respect certain minimal rules of humanitarian conduct that are part of international customary law.

15. It should be noted at the outset that the Special Rapporteur's use of the terms "Tutsi" and "Hutu" is by no means an attempt to characterize the conflict in Burundi along purely ethnic lines. The "ethnic" definitions attributed to the two primary groups in Burundi society are the legacy of the impact of a number of historical variables, in particular, the class distinctions imposed by colonial domination. 3/ In any event, the social fabric of Burundi has been influenced by post-colonial anthropological and historical assumptions which, although they currently seem to arouse scepticism in academic circles, nonetheless have become etched in the minds of many contemporary Burundians. 4/

16. As the Special Rapporteur has already pointed out (E/CN.4/1996/16, para. 24), the crisis in Burundi is the outcome of a struggle, common in societies experimenting with the process of a transition to democracy, between an elite minority with a decades-old monopoly over the country's intellectual, political, economic and social resources and the majority of the population, which was denied those resources or prevented from enjoying them through the democratic process, in particular, since the 1972 genocide targeting the Hutu intelligentsia.

17. In that year, a brief Hutu rebellion was countered with excessive force by the armed forces which, on the pretext of restoring peace and order, reportedly massacred at least 100,000 Hutus in a campaign of selective genocide. In addition, some 200,000 Burundians then went into exile. Three months later, the army, the Government and the economy had virtually been purged of their Hutu elements. 5/

18. This has been primarily a bitter struggle for political power. The ethnic turn Burundi society has taken is thus essentially a political phenomenon. 6/

19. The systematic elimination from Burundi society of various Hutu intellectuals, politicians and business persons in targeted assassinations throughout the first half of 1996, whether in Bujumbura or in certain provincial capitals, is reminiscent of the selective genocide of 1972. The Special Rapporteur learned from a number of eminent members of the Tutsi elite that the assassinations supposedly were acts of revenge against the Hutu for the acts of genocide which had targeted the Tutsi following the 1993 coup d'état, as the International Commission of Inquiry pointed out in its report (S/1996/682, para. 483). Nevertheless, even taking into account the many reports of alleged assassinations indicating that some were acts of vengeance, the Special Rapporteur is convinced that these infamous crimes, far from occurring by chance, were perpetrated in order to destroy the representatives of the Hutu intelligentsia that had already been obliterated.

20. However, the Special Rapporteur wishes to add that it also should be acknowledged that rebels belonging to the Forces de la défense de la démocratie (FDD), the armed wing of the Conseil national pour la défense de la démocratie (CNDD), had in March 1996 launched attacks in Bururi province in which some Tutsi reportedly had been killed, including officers of the Burundi army and members of their families. 7/

21. The Special Rapporteur has in fact observed an increase in the tempo of the attacks throughout the country by armed gangs and rebels against military installations. These attacks have engendered numerous counter-attacks by the army which, the allegations suggest, often appeared to be acts of reprisal against civilian populations, claiming many victims among non-combatants, including women, children and elderly persons.

22. Nevertheless, while acknowledging the information, the Special Rapporteur will not go so far as to assert that the Burundi army command coordinated or led these massacres. Indeed, the fact that soldiers counter-attacked indiscriminately after being targeted by their attackers suggests the absence of a coherent chain of command between the army general staff in Bujumbura and the troops in the field. Soldiers operating outside any hierarchical structure often act on their own, causing blunders. In most of the instances, their superiors apparently left them to their own devices, without intervening.

23. The Special Rapporteur cannot help but note that the key Government authorities appear to be in a state of utter confusion in the face of this alarming crisis and the army seems powerless to halt the rebel attacks. As a result, the authorities and the military command seem to be out of control, and are responding with indiscriminate reprisals against and assassinations of the

civilian population, thereby creating an even more favourable climate for the recruitment of FDD forces and their entrenchment in the country. 8/

B. Worsening of the situation in Burundi following the coup d'état of 25 July 1996

24. The coup d'état is simply the final chapter in a series of actions and policies on the part of the governing Tutsi minority, with the participation or support of Tutsi/military personnel and small extremist groups whose actions served its objectives. The Special Rapporteur has been observing this process, which started with the assassination of former President Ndadaye and gradually became a "creeping coup d'état", 9/ since the beginning of his mandate. Indeed, during the entire period from July 1993 to August 1996, the Tutsi opposition used every opportunity to derive the greatest possible advantage from the existing constitutional arrangement and did not hesitate to accompany its various obstructionist manoeuvres with street demonstrations. 10/

25. This gradual process was accompanied by another which the Special Rapporteur called "genocide by attrition" (see E/CN.4/1996/16/Add.1, para. 50). The two processes, which are manifested both politically and through the discriminatory practices of the minority against the majority, are characterized by constant dissimulation in daily actions and in the final analysis lead to an increase in the resources of the Tutsi elite. The latter is increasing its powers by the systematic use of ethnic cleansing, selective killings, acts of intimidation or terrorism perpetrated against the Hutu population and its representatives in civilian associations, and the harassing of "awkward" witnesses.

26. According to allegations confirmed by several sources, since 1993 at least 22 parliamentarians, all from the Front pour la démocratie au Burundi (FRODEBU), have been assassinated and 8 of their deputies' lives threatened. Four ministers of the former Government, including one Tutsi, six provincial governors and seven governor's advisers, as well as 46 local administrators, including a Tutsi lieutenant-colonel, the predecessor of the current mayor of Bujumbura, are also said to have suffered a violent death. Lastly, during the same period, 28 Hutu students are alleged to have been massacred at the University, and 22 members of religious orders, including some foreigners, are alleged to have been killed.

27. Beginning in June 1996, the "creeping coup d'état" gathered momentum, with the active participation of several members of the Tutsi elite, in both the Government and the opposition. The situation continued to deteriorate during the visit of the Special Rapporteur, who witnessed several public demonstrations in which hundreds, if not thousands of people marched through the streets with very few police to control them. The demonstrators were alternately young people demanding that partisans from SOJEDEM incorporated into the army, or members of militias from the circle around former President Bagaza mobilized to proclaim their opposition to any form of intervention in the country by foreign troops. When told by the mayor of Bujumbura that the intimidating processions of young Tutsis in the city were nothing more than physical exercises of a non-threatening nature, the Special Rapporteur wondered whether similar

processions organized by young Hutus might not have been considered provocations by the Tutsi minority.

28. It would be incorrect to believe that the coup d'état of 25 July 1996 in Burundi undermined a democratic system worthy of that name. Indeed, signs of a functioning democracy were barely perceptible and the minority showed little desire to apply the rules arising out of the Convention on Governance of 10 September 1994. The transition to democracy in Burundi died with the assassination of former President Ndadaye and in the wake of the events which led to the genocide of the Tutsis, then the massacring of Hutus. The long-standing difficulty in bringing to justice the persons responsible for those acts and the lack of impartiality of the judicial system are an extension of the very great unwillingness of military justice to prosecute members of the armed forces accused of having participated in the 1993 coup d'etat and the ensuing massacres of Hutus. 11/ In addition, the Burundi judicial system has only just begun to examine the files of the Hutus accused of having participated in massacres of Tutsis which were described as acts of genocide by the International Commission of Inquiry. These grave failings in the application of justice give rise to a profound sense of partiality and insecurity in the Hutu community.

29. The slow process of ethnic cleansing which has affected the Hutu population in the capital adds to the feeling of insecurity. Ethnic cleansing has gradually spread to all the provincial capitals and major urban centres with the complicity of the public authorities.

30. The attacks against President Sylvestre Ntibantunganya on 23 July 1996 during the burial of some 330 persons, most of them Tutsis, killed during the deadly Bugendana incident, his subsequent withdrawal from public life and his taking up quarters on 25 July at the residence of the American ambassador where he was given refuge, make up the final act of the tragedy in Burundi which began on 21 October 1993.

31. According to the Special Rapporteur, it is paradoxical that some members of the international community are now asking the de facto authorities who took power on 25 July 1996 to restore power to the former Government based on the Convention on Governance, when it is common knowledge that that régime lacked all the attributes of a democratically elected government. Since the events of October 1993 there has been a continuous dismantling of democratic institutions in Burundi by the forces belonging to the minority, whose handiwork is also evident in the coup d'état which has just taken place.

32. During his third visit to Burundi, the Special Rapporteur expressed his deep concern at the growing speed with which Burundi institutions were deteriorating, a trend which he had noted during his first two visits in June/July 1995 and in January 1996. Those institutions are still powerless to resolve the crisis in Burundi or control its international ramifications, following the second meeting in Mwanza, United Republic of Tanzania, organized on 9 June 1996 by former President Julius K. Nyerere, and the two regional summits of Heads of State and Government held in Arusha, United Republic of Tanzania, on 25 June and 31 July 1996, as well as the Organization of African

Unity (OAU) Summit of Heads of State and Government held in Yaoundé, Cameroon, from 8 to 10 July 1996.

33. During his visit, the Special Rapporteur noticed that the Convention on Governance, of 10 September 1994 was being denounced with increasing openness on all sides. The Tutsi community was refusing to obey any longer the requirements which it imposed on them vis-à-vis their Hutu partners, while the latter were being short-changed, holding only 23 per cent of the positions out of the 55 per cent allocated to them at the outset.

34. The complete lack of legitimacy conferred on the Convention on Governance, even though many moderate Burundians had supported it, and the carelessness of the authorities, were never greater than at the moment when the President of the Republic and the Prime Minister, just back from the first Arusha summit, gave differing accounts of the agreement which they had concluded and aired their differences of opinion in public, as, for example, in the letter which the Prime Minister sent to the President of the Republic on 2 July 1996. At the governmental level, the exercise of power in what were certainly crucial moments for the future of the country was gathered in the hands of the President of the Republic, the Prime Minister, the Minister of Defence and the National Security Council, while the other ministers in the Government were barely kept informed of Burundi's request for foreign security assistance made at the 25 June Arusha Summit and supported by the Yaoundé Summit a dozen or so days later.

35. For its part, the National Assembly was excluded from any substantive debate on the options discussed at Arusha, which in any case never began to be implemented in Burundi because of the change of regime decreed on 25 July 1996.

36. Since the closing of the border between Burundi and Zaire, some 20 Hutu Parliamentarians living in Uvira on the other side of the border are said to be having great difficulty in making their way to the National Assembly and apparently had to take roundabout routes through the United Republic of Tanzania via Kigoma and Lake Tanganyika. About 20 FRODEBU parliamentarians are said to have taken up exile in the United Republic of Tanzania, and a few more in Kenya, since the 25 July coup d'état. Although several foreign parliaments are providing moral support and material assistance to the Burundi parliamentarians. The National Assembly cannot function normally. The 13 September 1996 decree by Major Buyoya announcing the restoration of the National Assembly within the legal framework of the transitional institutional system, together with the restoration of political parties, gives no indication as to when one of the next regular sessions of the Assembly will be convened. To date, the Assembly has adopted no official position on the latest events in the crisis. Nor has it been able to take up the work of the Technical Commission on the National Debate, the Chairman of which resigned in April 1996, or to give its opinion on some of the urgent problems which are undermining the country, such as the general climate of insecurity, the question of refugees, and displaced or dispersed persons, the property and land distribution regime, the deteriorating economic, social and health conditions of the people and the loss of cultural and moral values capable of bringing the people of Burundi together.

III. OBSERVATIONS

37. In the Declaration and Programme of Action of the World Conference on Human Rights of 1993, democracy is considered a condition sine qua non of respect for and enjoyment of human rights. The Special Rapporteur believes that human rights organizations should take a pro-democracy approach in their activities for Burundi and demand the immediate launching of a transition process based on democratic institutions and the equitable participation of all components of Burundi society. In the light of the experience of a number of regimes which made the transition to democracy in the 1980s, the Special Rapporteur believes that a system of institutional transition cannot be unilaterally defined by the new de facto authorities in power; rather, a genuine broad dialogue within the political parties and civil society must be initiated.

38. By supplanting the country's lawful authorities, the coup d'état of 25 July 1996 disrupted an important negotiation process under way in the subregion, which was on the verge of proposing appropriate solutions for the pacification of Burundi. The use of armed violence in order to gain power, even for the most respectable reasons, cannot be tolerated by the international community. For its part, the Security Council, in its resolution 1072 (1996) of 30 August 1996, strongly condemned the overthrow of the legitimate Government and constitutional order in Burundi and called upon the new regime to restore legality in the country and to lift the ban on the National Assembly and political parties.

39. The Security Council strongly supported the efforts of the OAU and former President Nyerere and demanded that all sides in Burundi should declare a ceasefire and an immediate halt to violence. It also demanded that all of Burundi's political parties and factions, whether inside or outside the country, should initiate negotiations immediately, with a view to reaching a comprehensive political settlement. If no significant progress to that end was achieved by 31 October 1996, the Security Council reserved the right to resort to the imposition of sanctions against Burundi under the Charter of the United Nations, which might include, among others, a ban on the sale of arms and related matériel to the new regime and to all factions inside or outside Burundi, and measures targeted against its leaders if they continued to encourage violence and obstruct a peaceful resolution of the Burundi crisis. As the Secretary-General said in his report to the Security Council of 15 August 1996 (S/1996/660, para. 49), "the international community must allow for the possibility that the worst may happen and that genocide could occur in Burundi. [...] military intervention to save lives might become an inescapable imperative."

40. The Special Rapporteur warmly congratulates the OAU on the various initiatives it has taken from the outset of the crisis in Burundi, and, in particular, during the negotiation process leading to the Arusha regional summits of 25 June and 31 July 1996 and the thirty-second ordinary session of the Assembly of Heads of State and Government of the Organization of African Unity, held in Yaoundé, from 8 to 10 July 1996. He has noted the press release issued by OAU on 5 August 1996, in which the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution requested the Bujumbura regime to take immediate steps to put an end to illegality and restore the

constitutional order of Burundi. On the other hand, he expresses his profound regret at the decision taken by the Central Organ of the OAU Mechanism to terminate the mandate of OMIB, which performed remarkably under particularly difficult conditions. The Special Rapporteur applauds the determination of those African countries, including Ethiopia, Kenya, Rwanda, Uganda, United Republic of Tanzania, Zaire and Zambia, which decided unanimously to impose economic sanctions against Burundi, coinciding with the efforts undertaken by President Nyerere, the Heads of State of the region and the OAU, in order to arrive at a peaceful settlement of the Burundi conflict. He would have hoped, however, to see the Western countries voice stronger support for the condemnation of the coup d'état by the neighbouring States of Burundi and for the above-mentioned African countries in their common undertaking to impose sanctions against Burundi.

41. The Special Rapporteur expresses his profound dismay at the resurgence of massacres which seems to have occurred since the coup d'état, noting claims of more than 6,000 deaths, mainly in the provinces of rural Bujumbura, Cibitoke, Kayanza, Murumvya and Gitega. According to some reports, in the commune of Giheta, Gitega Province, alone, 4,050 corpses were buried out of a total of approximately 6,000 between 27 July and 10 August 1996; apparently, a number of bodies could not be identified and others were thrown into the Ruvyironza River.

42. In this connection, the armed campaign waged by civilians in the country last spring may well have had disastrous effects; in a number of cases, rebels were reported to have carried out reprisals against certain local Tutsi officials or persons of note suspected of possessing arms. This factor may have played a role in the killing at Teza, where workers in a tea factory were allegedly pursued as far as their homes and then massacred.

43. However, the Special Rapporteur notes, and views as a positive sign, the ending of the suspension of the National Assembly and political parties by the de facto Burundi authorities, who have reconsidered this most unfortunate decision. Nonetheless, this measure will be inadequate if the de facto authorities are not capable of ensuring the inviolability of the parliamentarians and preventing any attacks on their physical integrity and that of their families.

44. Nonetheless, while aware that the Hutu rebels are deliberately resorting to violence and committing atrocities against the minority, action which he finds reprehensible, the Special Rapporteur cannot accept the use of arms to effect a change of political regime.

45. As Burundi has ratified the major international human rights instruments and the Geneva Conventions of 1949 and the Protocols Additional thereto of 1977 (see E/CN.4/1996/16, note No. 8, p. 36 and E/CN.4/1996/16/Add.1, para. 33), the de facto authorities and, consequently, the Burundi army, must ensure their implementation and respect for their norms by members of the armed forces and must prevent atrocities from being committed by the military or by ordinary Burundi citizens. Unfortunately, thus far, the Special Rapporteur has discerned little change in the basic attitude of the High Command of the army in this regard. While rebels or armed gangs are not similarly bound by these obligations, they nevertheless are required to respect certain humanitarian

principles arising from international customary law and recognized by all civilized nations.

46. The Special Rapporteur intends to emphasize the fact that there can be no lasting solution to the Burundi crisis unless exemplary measures are taken to put an immediate end to serious human rights violations, investigate past violations and bring the perpetrators of such acts to justice. No political solution will be viable in Burundi unless it takes into consideration the absolute necessity of punishing human rights violations. A democratic regime worthy of the name is duty-bound to accord priority to respect for human rights. A human society that proves to be incapable of devising a human rights strategy which satisfies certain minimum requirements, in particular, in the area of fundamental rights and freedoms, is doomed to failure.

47. Such an approach has implications for the problems posed by refugees and internally displaced persons in the Great Lakes region. These populations cannot be expected to return to their homes if the political systems and national laws to which they are subject fail to offer them reliable guarantees against summary executions, enforced disappearances, torture and unfair trials. The Special Rapporteur is therefore firmly convinced that it is impossible to find humanitarian solutions to the problems of refugees and displaced persons without taking into account the need to guarantee rights and fundamental freedoms. The very concept of protecting refugees cannot be dissociated from the concept of human rights. Human rights violations are a major cause of mass population movements, and refugees are persons whose rights have been seriously scorned or threatened. 12/ There can be little hope that these populations will return to their homes if such threats persist.

48. The Special Rapporteur has taken note, with great interest, of the report of 22 August 1996 issued by the International Commission of Inquiry (S/1996/682) and the information it provides regarding the circumstances surrounding the assassination of President Ndadaye and the massacres which followed. He notes with great regret, however, that, despite the very great difficulties that the members of the Commission encountered during their work and despite their great intellectual capacities, they have not really come up with any new ideas regarding two issues which are crucial to the future of Burundi, namely, impunity and genocide. The Special Rapporteur is very frustrated by the incomplete nature of the conclusions and recommendations presented by the International Commission of Inquiry, which leave unresolved the scourge of impunity and make no definite and specific proposals on how to eliminate it.

49. As to the thorny question of genocide, it would have been welcome if the Commission had undertaken a detailed study of that aspect of the Burundi situation, by combining recent conceptual elements with concrete facts gathered in the field. Whereas the 1951 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide simply as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (article II), there are other criteria which are important for a thorough grasp of the acts of genocide that have occurred in recent times - specifically, criteria based on the social or economic class or political affiliation of groups of persons exposed to possible genocide - which are not included in that definition. Furthermore, in the case of Burundi, it would have been useful for

the analysis to be carried further with respect to three issues: the need to gather evidence, even indirect evidence, of the real intentions of the person or persons involved in an act of genocide; the threat that genocide poses for the survival of a specific group of human beings; and the unilateral nature of the oppression or reprisals carried out. 13/

50. In the final analysis, the report of the International Commission of Inquiry provides no new information concerning who was really behind the assassination of President Ndadaye or regarding the main protagonists in the genocide of the Tutsis and the subsequent massacres of the Hutus. The Special Rapporteur also very much regrets that the Commission encountered a clear lack of cooperation from the Burundi army, particularly in the context of the hearing of a number of military witnesses.

51. Finally, the Special Rapporteur was shocked by the unrealistic nature of the Commission's conclusions on the issue of assigning to the Burundi system of justice the task of prosecuting, trying and sentencing, in accordance with the laws of Burundi and the provisions of the International Covenant on Civil and Political Rights, those responsible for the October 1993 coup d'état, the assassination of President Ndadaye, acts of genocide against Tutsis and the ensuing massacres of Hutus. According to its report, the International Commission of Inquiry is very well aware of the limitations and weaknesses of the Burundi system of justice. The Commission would assign to the Burundi system of justice a task which the latter is not capable of carrying out. The intolerable difficulties encountered in recent months by the three criminal chambers of the courts of appeal of Ngozi, Gitega and Bujumbura are glaring proof of this.

52. As he has already pointed out in his first report (E/CN.4/1996/16, paras. 146-153), the Special Rapporteur reiterates that the administration of justice in Burundi must be reformed as a matter of the utmost urgency in order to restore its credibility with the people of Burundi and to restore its impartiality by ensuring that its ethnic composition reflects all elements of Burundi society. At their two first sessions, held in February and May-June 1996, the three criminal chambers mentioned above dealt with only about 150 cases out of 1,300 cases relating to the painful events of October 1993, for which there are nearly 4,000 defendants awaiting trial.

53. The Special Rapporteur was horrified to learn, in regard to these 150 cases, that the three criminal chambers had handed down 89 death sentences, 36 sentences of life imprisonment and a number of prison sentences of 20 years, even though not one of the defendants had had the assistance of counsel or been aware of the gravity of the charges against him. The Special Rapporteur noted with his own eyes the almost complete lack of resources with which the appeals courts, prosecutors - several of whom have to cover a number of provinces - and their services operate. They are without paper or typewriters, without means of transportation for travelling to the scene of the crime, conducting inquiries or visiting the accused in prison at the time of sentencing, virtually without telephone and without any protection during the proceedings.

54. Moreover, the Special Rapporteur wishes to emphasize the speed with which the trial chambers arrived at their first convictions, devoting, on average, two

to three hours to hearing each case. In his view, such conduct constitutes a flagrant denial of justice. We cannot overemphasize the importance of ensuring minimum conditions for the proper operation of Burundi justice. The only way to bring back the rule of law, restore confidence and promote reconciliation among all the people of Burundi is by combating the impunity which has existed in Burundi for 30 years. In order to do so, it is indispensable to have foreign lawyers present at the next session of the criminal chambers, which has been postponed, in principle, till October. Only with a concerted effort and international assistance of this nature will it be possible for a totally inadequate system of justice to function normally again.

55. The expatriate staff of the various non-governmental organizations or humanitarian institutions working in Burundi have not escaped the violence. The murders of three ICRC delegates on 4 June 1996 prompted considerable fears within the international community and among non-governmental organizations, making their work in the field even more difficult. One organization, Action internationale contre la faim (AICF), faced with a stream of increasingly specific threats against it, decided to leave Burundi in mid-July. This episode illustrates in part the dilemma facing the non-governmental organizations. Indeed, particularly since the ICRC pulled out of Burundi, the current climate of extreme insecurity has gradually been turning the country into a vast terra incognita increasingly cut off from international assistance.

56. With regard to the sanctions imposed on 31 July 1996 by the Arusha regional summit, the Special Rapporteur is very aware that these measures are beginning to have a real impact on the population of the towns, particularly the urban elite, and that they are adding to the suffering in rural areas, where people are often poor and where, owing to the violence and the civil war, regular access to, inter alia, health care, hygiene, various essential goods and primary and secondary education have become even more drastically curtailed.

57. The Special Rapporteur is following very carefully the work of the sanctions committee established in Nairobi, and he welcomes the exceptions which that committee has granted to assist the work of United Nations agencies in Burundi by authorizing, as of 6 September 1996, exceptions in respect of baby food, including articles necessary for the health of children and hospital patients, laboratory and emergency care equipment, limited quantities of kerosene to supply the cold chains for vaccines, fuel and communications equipment for the operation of these agencies in the field.

58. In the final analysis there cannot be any lasting peace in Burundi unless a real solution is found to the cardinal problem, namely, undivided rule by the Tutsi minority and its continuing efforts to remain in power, thanks to the control it has over the army and its continued exclusion of the Hutu majority, which it marginalizes. The Special Rapporteur repeats that no peace worthy of the name can be established in Burundi unless an equitable solution is found to the above-mentioned problem, a solution that provides strong guarantees to the minority once and for all, ensures respect for democracy and leads, at last, to a real sharing of power on concrete and realistic bases, so that the tremendous social and economic inequalities that continue to beset Burundi society may be overcome.

IV. RECOMMENDATIONS

59. After making his third visit to Burundi, the Special Rapporteur wishes to formulate a number of recommendations. They follow on from those submitted in his initial report (E/CN.4/1996/16, paras. 144-170) and the addendum thereto (E/CN.4/1996/16/Add.1, paras. 57-72) and require the urgent attention of the new de facto authorities and the international community in view of the extremely alarming deterioration of the human rights situation in Burundi, particularly since the coup d'état of 25 July 1996.

A. At the national level

60. A genuine and substantive political dialogue must be initiated as early as possible between all the parties to the conflict in Burundi, including those residing outside Burundi, and it must lead to negotiations conducted under the aegis of the United Nations and the Organization of African Unity.

61. The Special Rapporteur expects the de facto authorities to embark urgently and without further delay on the reforms which he called for in his initial report (E/CN.4/1996/16, paras. 146, 147, 157 and 158) and the addendum thereto (E/CN.4/1996/Add.1, paras. 58 (c), 58 (d) and 58 (f)) with respect to the Burundi army and security forces, the judicial system and education, so as to facilitate access to the various State institutions by the majority of the people, who are currently excluded from the country's elite. The experience of the democratic transition in South Africa could be extremely helpful in pointing the way.

62. In the light of the recent forced return of 15,000 Rwandan refugees to their country of origin, which took place in the area of Ngozi towards the end of July, and following the repatriation under the auspices of the United Nations High Commissioner for Refugees (UNHCR) of 66,000 refugees in August 1996, the de facto authorities should actively pursue their cooperation with the High Commissioner and avoid taking unilateral steps with respect to the approximately 4,500 refugees who are still in Burundi, even if new flows of refugees arrive in the months to come. The cooperation should also focus on finding humane solutions for the prompt return in a peaceful and orderly manner of the 200,000 Burundi refugees principally in Zaire and the United Republic of Tanzania.

63. In order to demonstrate their commitment to the cause of human rights, the military leaders are urged to give official instructions to all their subordinates to desist from killing non-armed civilians and to remove from his post any soldier, whether or not an officer, who is implicated in such acts or likely to commit them afresh.

64. While noting that the suspension of the National Assembly and the political parties has been ended, the Special Rapporteur urges the de facto Burundi authorities to protect and respect the physical integrity of the parliamentarians exiled in the United Republic of Tanzania, Zaire and Kenya and to ensure that the National Assembly receives the necessary constitutional guarantees to be able to carry out its work effectively.

65. The Special Rapporteur also deems it essential to set a timetable with the de facto authorities for the holding of free and fair legislative elections in the near future, with the active participation of the entire population of Burundi.

66. The Special Rapporteur urges the de facto authorities to put an immediate halt to the violence and massacres occurring throughout the country and to arrest and bring to trial the perpetrators of such crimes. He calls for an immediate inquiry to look into the circumstances of the tragic assassination of the Archbishop of Gitega, Monseigneur Ruhana, and of the two nuns who were accompanying him, and he demands that the perpetrators of these crimes should be pursued and arrested without delay. He further requests the same authorities and the general staffs of the army and security forces to give official instructions to their subordinates regarding the absolute necessity of halting immediately the massacres of non-armed civilians, the majority of whom are women, children and elderly persons, massacres which for the most part are carried out by soldiers, sometimes accompanied by displaced persons or Tutsi militia.

67. He urges them to spare no effort to ensure that no extrajudicial or summary executions, forced disappearances or arbitrary arrests accompanied by ill treatment are carried out by persons in the Burundi army or security forces.

68. He calls upon the de facto authorities to establish a firm chain of command within the army and the security forces, so that senior officers bear real responsibility for abusive acts committed by their subordinates.

69. The Special Rapporteur urgently requests that the allegations of complicity between the governmental armed forces and some extremist armed groups or militia be denounced by the competent authorities, which should begin without delay to keep such armed groups under strict surveillance, if not to dismantle them completely.

70. The Special Rapporteur most firmly requests the de facto authorities to carry out forthwith an independent, neutral, objective and comprehensive inquiry into the exact circumstances of the murder of the three ICRC delegates on 4 June 1996 near Mugina, Cibitoke Province, and to find out who is responsible for those deaths. The results of the initial inquiry submitted by the former Burundi authorities are totally inadequate and unacceptable. The international community cannot rest as long as the perpetrators of this odious crime escape prosecution and the punishment they deserve.

71. The Special Rapporteur emphasizes in particular to the de facto authorities the urgent necessity of providing the non-governmental organizations with adequate security conditions, without which they cannot continue to assist the vulnerable groups of the Burundi population.

72. The Special Rapporteur also recommends that the de facto authorities pay greater attention to the recommendations formulated by the International Commission of Inquiry (S/1996/682, paras. 492 and 493), which inter alia allude to the fact that no system of justice can function normally as long as there are overriding ethnic confrontation and total insecurity, fed by the impunity which

permeates Burundi. Once peace has returned and minimal security conditions have been restored, a fundamental reform of the Burundi system of justice should be undertaken, with emphasis on the indispensable inclusion of Hutus in the ranks of the judges, prosecutors and judicial police, in order to restore balance to the vital machinery of the administration of justice, confer on it the characteristics of a non-political, impartial and independent body and endow it with the necessary powers and the credibility that it deserves.

73. The Special Rapporteur unreservedly supports the recommendation of the International Commission of Inquiry calling for the abolition of the present practice of indefinite detention without formal accusation or prosecution.

B. At the international level

74. The Special Rapporteur congratulates the United Nations Secretary-General, the Secretary-General of the OAU and former President Nyerere on their untiring efforts to find a solution to the Burundi crisis and on doing their utmost to prevent it. In this regard, former President Nyerere should be warmly encouraged to continue his good offices with the aim of engaging all the parties to the Burundi conflict in a constructive dialogue leading to concrete negotiations which will bring peace and national reconciliation.

75. The Special Rapporteur also requests the international community's continued support, especially in political, financial and logistic terms, for the intense efforts being made by the Secretary-General, his Special Representative in Bujumbura and the Security Council to manifest the international community's solidarity with Burundi, induce the de facto regime to embark resolutely on the path of democracy and respect for human rights, and to ward off all possibility of the worst occurring in Burundi, through the preparation of an inter-agency emergency plan to come to the aid of the most needy and vulnerable population groups.

76. The Special Rapporteur earnestly requests the international community to remain united behind the efforts currently being made by the United Nations, the OAU and the African countries as a group, to maintain pressure by means of economic sanctions and to demand from the de facto authorities immediate concrete evidence of their intention to conclude a ceasefire between all the interested parties leading to realistic negotiations. If necessary, at a later stage, recourse to the presence of an international peacekeeping force which would permit neutralization of the army and the rebels, reorganization of the army and the security forces throughout the country, and also the start of a real dialogue on the fundamental problems of the country, should not be excluded.

77. Despite the dangerous and changing context which currently characterizes Burundi, particularly since the departure of OMIB, the international community should significantly increase the number of human rights observers in Burundi, with a view to gradually establishing a presence in the principal towns of all the provinces. Even when limited, the presence of observers is essential in order to reassure the people and ensure that the serious human rights violations they suffer are duly denounced and investigated.

78. The Special Rapporteur noted with satisfaction resolution 1053 (1996) adopted by the Security Council on 23 April 1996 relating to the interim report on the sale of arms 14/ dated 17 January 1995 which was submitted to it by the International Commission of Inquiry. In particular, he supports the request of the Security Council addressed to the States of the Great Lakes region, and he earnestly requests them to ensure that their territory is not used by armed groups as a base to launch raids or attacks against another State in violation of the principles of international law and the Charter of the United Nations. Following the lead of the Security Council, he strongly encourages the States in the region to honour the commitments which they assumed during the Tunis summit on 18 March 1996, especially their pledge to stamp out arms traffic and prohibit the military training of the rebel groups with a view to armed border raids. The Special Rapporteur earnestly requests that the threat which the illegal and uncontrolled movements of arms and related matériel pose to peace and stability in the Great Lakes region should be eliminated.

79. The Special Rapporteur requests the Security Council and the United Nations Secretary-General to concern themselves with the lack of attention which the troubling problem of impunity in Burundi received from the International Commission of Inquiry and with the absence from its recommendations of proposals for measures "of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts, to prevent any repetition of deeds, similar to those investigated by the commission and, in general, to eradicate impunity and promote national reconciliation in Burundi". 15/ In this respect, the Special Rapporteur recalls that, when drawing up the mandate of the International Commission of Inquiry, the Security Council recognized that the cycles of violence in Burundi could not be stopped unless an end was also made to impunity. Consequently, the Special Rapporteur strongly recommends that the Security Council consider the possibility of immediately setting up an international court to prosecute those who ordered and carried out the assassination of President Ndadaye, the genocide against the Tutsis and the ensuing massacres of the Hutus.

80. In the meanwhile, the Special Rapporteur requests the international community to be generous in its support of the international legal assistance project the request for which the Burundi authorities and the Burundi Bar Association submitted to the United Nations in April 1996. In the first stage of this project, which is the result of intense collaboration between the United Nations Centre for Human Rights operational office in Bujumbura, the Office of the Special Representative of the Secretary-General for Burundi, the representatives of the Burundi Bar, the Ministry of Justice and various local associations for the defence and promotion of human rights, a number of foreign lawyers would help their Burundi colleagues to assist defendants awaiting sentence for three weeks during each session, and if possible during several sessions. The focal point for the project, which is intended to expedite the examination of at least 540 cases currently pending before the criminal chambers of the Ngozi, Gitega and Bujumbura courts of appeal, would be the Centre's operational office in Bujumbura.

81. Lastly, the Special Rapporteur supports the proposal made by the Special Rapporteur on the human rights situation in Zaire in his forthcoming report to

the Commission on Human Rights at its fifty-third session requesting a special session of the Commission devoted to the most urgent problems of the Great Lakes region. This special session could be the occasion for the adoption of a comprehensive resolution on the region, as recommended by the Special Rapporteurs on the human rights situation in Burundi, Rwanda and Zaire at the close of their first meeting on 18 January 1996 (E/CN.4/1996/69, para. 18).

Notes

1/ For the expression "interlocking of reciprocal acts of violence", see Lemarchand, René, "Burundi in comparative perspective: Dimensions of ethnic strife" in: McGarry J. and O'Leary B. eds., The politics of ethnic conflict regulation, London and New York, Routledge, 1993, cit., Adekanye, J.'Bayo, "Rwanda/Burundi: 'Uni-ethnic' dominance and the cycle of armed ethnic formations", Social identities, vol. 2, No. 1, 1996, p. 38.

2/ Malkki, Liisa, Purity and Exile, The University of Chicago Press, 1995, p. 35.

3/ Adenkanye, J'Bayo, idem.

4/ Malkki, op. cit., p. 28.

5/ Lemarchand, René and Martin, David, Selective genocide in Burundi, Report No. 20, London, Minority Rights Group, 1974, p. 5, cit. Malkki, op. cit., pp. 35-36.

6/ Lemarchand, René, Burundi: Ethnic conflict and genocide, Washington, Wilson Center Press/Cambridge University Press, 1996, cit. Gourevich, Philip, "The Poisoned Country", The New York Review of Books, 6 June 1996, p. 59.

7/ See Ajello, Aldo, "First mission report of the Special Envoy for the Great Lakes region", Brussels, Council of the European Union, 30 May 1996, point No. 6.

8/ Malkki, op. cit., p. 31.

9/ According to the expression used in a document of the United States Committee for Refugees dated 30 July 1996.

10/ Lemarchand, René, op. cit., first paperback edition with new preface, p. xix.

11/ Reyntjens, Filip, "Burundi: Breaking the cycle of violence", Minority groups update, London, Minority Rights Group, 1996, p. ii.

12/ UNHCR. The State of the World's Refugees. In Search of Solutions, 1995, Oxford, Oxford University Press, 1995, p. 58.

13/ Jonassohn, Kurt, "What is genocide?", in Fein, Helen, ed., Genocide Watch, New Haven-London, Yale University Press, 1992, pp. 17-19.

14/ Interim report of the International Commission of Inquiry to investigate reports of the sale or supply of arms to former Rwanda government forces in violation of the Security Council arms embargo and allegations that those forces are receiving training to destabilize Rwanda (S/1996/67).

15/ Security Council resolution 1012 (1995), of 28 August 1995, para. 1 (b).